

**From:** [Hatfield, William S.](#)  
**To:** [Yacovone, Krista](#)  
**Cc:** [Otero, Camille V.](#); [Hauge, Paul M.](#)  
**Subject:** Re: Your clients' production of its 104(e) documents to EPA  
**Date:** Wednesday, March 8, 2017 6:11:56 PM

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Hi Krista:

We are surprised by your email and EPA's variance from the positions you relayed in our prior discussions. We have waited over 9 months for the documents, which material is directly related to our clients and which our clients are entitled to. There is no conceivable claim of confidentiality by G-I over the FOIA materials with respect to ISP or IES. You have said as much in our past discussions.

At this time, despite significant efforts, and further unnecessary negotiations and delays, we have not been able to reach any agreement with G-I's counsel, QE, for production of the FOIA documents sought in the matter.

As you know, we sought such an agreement nearly a year ago from QE but were denied. That led to the subject FOIA. True to form, QE has continued to be unreasonable as it seeks an overly broad agreement from our clients - well beyond what is needed for the production - which is both objectionable and a leverage play. The FOIA is still pending and it is the only present access we have to the requested materials.

We appreciate EPA's continued efforts to meet its statutory obligations under FOIA - but we feel this process has taken entirely too long. Kindly expedite EPA's decision, which we hope and anticipate will follow and confirm our prior discussions. We look forward to receipt of the FOIA documents in the near term.

Thank you.

Bill

William S. Hatfield  
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On Mar 8, 2017, at 3:32 PM, Yacovone, Krista <[yacovone.krista@epa.gov](mailto:yacovone.krista@epa.gov)> wrote:

Camille,

I apologize if I was imprecise when we spoke about the determination EPA might reach regarding the outstanding portion of FOIA Request EPA-R2-2016-007137, which was



partially denied pending further inquiry. During the discussion you refer to, I indicated to you that I had reviewed the relevant materials, including G-I Holdings, Inc.'s substantiation of its claim of entitlement to EPA's confidential treatment of its information, and that in light of the unique circumstances here, i.e., where your client likely has knowledge of the information over which confidentiality has been claimed by G-I Holdings, Inc., it made sense for your client to try to reach an agreement with G-I Holdings, Inc., which would allow you to obtain the desired information while foregoing the need for final EPA action on your FOIA Request.

I also specifically told you that should G-I Holdings, Inc. and Ashland/ISP/IES be unable to reach an agreement that would result in your voluntary withdrawal of the outstanding FOIA Request, this office would be required to make a Regional Counsel determination as to G-I Holdings, Inc.'s claim of confidentiality over the requested information. My conversation with you was in no way intended to constitute such a final determination by Regional Counsel as required under 40 C.F.R. § 2.205 but rather was my attempt to obviate the need for the consumption of additional time that such a formal determination (and possible subsequent litigation) would require. I regret any misunderstanding on the status of your FOIA Request and the purpose of our discussion, which was intended to help you and your client achieve expedient resolution of this issue.

Relatedly, I received an email from Sylvia Simson at Quinn Emanuel yesterday indicating that she was surprised to hear that G-I Holdings, Inc. and Ashland/ISP/IES were unable to come to an agreement and asking EPA to provide the parties with further opportunity to discuss and finalize the agreement this week before Regional Counsel issues its final determination. I reiterate my recommendation that the parties resolve this amongst themselves.

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Krista E. Yacovone  
Assistant Regional Counsel  
Office of Regional Counsel  
New Jersey Superfund Branch  
U.S. Environmental Protection Agency, Region 2  
290 Broadway, 17<sup>th</sup> Floor  
New York, NY 10007-1866  
(212) 637-3095

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**From:** Otero, Camille V. [<mailto:COtero@gibbonslaw.com>]

**Sent:** Wednesday, March 08, 2017 8:23 AM

**To:** Yacovone, Krista <[yacovone.krista@epa.gov](mailto:yacovone.krista@epa.gov)>

**Cc:** Hatfield, William S. <[WHatfield@gibbonslaw.com](mailto:WHatfield@gibbonslaw.com)>; Hauge, Paul M. <[PHauge@gibbonslaw.com](mailto:PHauge@gibbonslaw.com)>

**Subject:** Re: Your clients' production of its 104(e) documents to EPA



Krista: the position set forth below with respect to the status of the Agency's review and determination as to the appropriateness of the confidential designation as to Ashland/ISP over the documents provided by GI is significantly different than what you conveyed to Bill and me during our last conference call. You specifically told us that the Agency determined that the documents were not confidential as to Ashland/ISP but may be confidential as to the rest of the world. You suggested it would therefore be difficult and time consuming for EPA to produce the documents to us and suggested that we try to work this out with GI and get the documents directly from them. It's unclear to us why the Agency's position has changed. Please let us know when you are available to discuss this further.

Thank you.

Camille

Sent from my iPhone

On Mar 7, 2017, at 6:35 PM, Yacovone, Krista <[yacovone.krista@epa.gov](mailto:yacovone.krista@epa.gov)> wrote:

Camille,

I am sorry to hear that the parties were unable to reach an agreement. As you will recall, on June 30, 2016, EPA initially denied your request for responsive records which have been claimed confidential and may contain information exempt from disclosure under 5 U.S.C. § 552(b)(4) ("Exemption 4"). EPA has not yet issued a final confidentiality determination as to whether Exemption 4 applies in this case. Once EPA issues a final confidentiality determination, EPA will notify you whether the information qualifies for confidential treatment or may be released. Should EPA determine that the information qualifies for confidential treatment, your recourse would be to seek de novo review of EPA's determination in federal district court, which would involve the U.S. Department of Justice and U.S. Attorney's Office. See 5 U.S.C. § 552. As such, I emphasize that it would behoove your client to come to some agreement with G-I Holdings, Inc. or other potential custodians of the responsive records which have been claimed confidential.

EPA will let you know once it issues a final confidentiality determination, which will come from our Regional Counsel. Please let me know if any developments arise on your end.

Krista

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Krista E. Yacovone



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**From:** Otero, Camille V. [<mailto:COtero@gibbonslaw.com>]  
**Sent:** Tuesday, March 07, 2017 11:54 AM  
**To:** Yacovone, Krista <[yacovone.krista@epa.gov](mailto:yacovone.krista@epa.gov)>  
**Cc:** Hatfield, William S. <[WHatfield@gibbonslaw.com](mailto:WHatfield@gibbonslaw.com)>; Hauge, Paul M. <[PHauge@gibbonslaw.com](mailto:PHauge@gibbonslaw.com)>  
**Subject:** RE: Your clients' production of its 104(e) documents to EPA  
**Importance:** High

Hi Krista.

Unfortunately we were unable to come to an acceptable agreement with Quinn Emanuel on its production of the G-I 104(e) documents. Although this should have been a simple agreement by the parties to exchange their respective 104(e) productions, Quinn Emanuel (in its usual fashion) sought to over-reach and place too many unnecessary and unreasonable conditions on its production of the documents.

We apologize if this causes additional work for the Agency but Quinn Emanuel has left us with no choice but to obtain the documents through the FOIA process. As such, we request that you provide us with the documents requested pursuant to our FOIA Request (EPA-R2-2016-007137) submitted on May 31, 2016.

Please advise when we may expect to receive these documents.

Thank you.

Camille

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**From:** Yacovone, Krista [<mailto:yacovone.krista@epa.gov>]



**Sent:** Thursday, March 02, 2017 2:13 PM  
**To:** Otero, Camille V.  
**Cc:** Hatfield, William S.; Hauge, Paul M.  
**Subject:** RE: Your clients' production of its 104(e) documents to EPA

Hi Camille,

The bates range of documents produced by G-I Holdings, Inc. in response to EPA's January 21, 2016 104(e) Request for Information is G-I\_EPA0000001-G-I\_EPA0021858. This represents G-I Holdings' entire production, which you received in response to FOIA EPA-R2-2016-007137, excluding G-I\_EPA0000369-G-I\_EPA0006751 and G-I\_EPA0006779-G-I\_EPA0007017, which are still subject to G-I Holdings' CBI claim. (G-I Holdings withdrew its CBI claim as to G-I\_EPA0006752- G-I\_EPA0006778, since that document is publically available and was produced at G-I\_EPA00000213-G-I\_EPA00000239.)

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Krista E. Yacovone  
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**From:** Otero, Camille V. [<mailto:COtero@gibbonslaw.com>]  
**Sent:** Wednesday, March 01, 2017 4:04 PM  
**To:** Yacovone, Krista <[yacovone.krista@epa.gov](mailto:yacovone.krista@epa.gov)>  
**Cc:** Hatfield, William S. <[WHatfield@gibbonslaw.com](mailto:WHatfield@gibbonslaw.com)>; Hauge, Paul M. <[PHauge@gibbonslaw.com](mailto:PHauge@gibbonslaw.com)>  
**Subject:** FW: Your clients' production of its 104(e) documents to EPA

Krista:

We are in the process of negotiating an agreement with the G-I entities regarding the referenced subject matter. Can you please confirm the bates range of documents produced by G-I in response to the January 21, 2016 104(e) request for information that EPA sent to G-I? To be clear, we are looking for the bates range of the entire production, not just those documents that G-I marked as "confidential" and have been withheld the Ashland/ISP parties.

If you have any questions, please do not hesitate to contact us.



Thank you.

Camille

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**From:** Otero, Camille V.  
**Sent:** Thursday, February 23, 2017 10:15 AM  
**To:** Sylvia Simson  
**Cc:** Hatfield, William S.; Andrew J. Rossman; Jonathan Oblak;  
[yacovone.krista@epa.gov](mailto:yacovone.krista@epa.gov)  
**Subject:** Re: Your clients' production of its 104(e) documents to EPA

Sylvia:

We understand what you told us but experience has taught us that what you say and ultimately do are two different things. We will not put our clients through a month or so of fruitless negotiations over a simple agreement and numerous meet and confers to try to obtain documents to which we are already entitled. That being said, if we can reach an agreement by cob tomorrow that includes an acceptable date certain for production of documents, then there will be no need to burden EPA with this matter. However, if we do not have an agreement by cob tomorrow we will advise the Agency and request that EPA respond to our FOIA request and provide us with the documents we requested.

To be clear, this matter could have been avoided had your clients agreed to cooperate with our clients as we requested in the first instance. Your failure and refusal to cooperate and provide us with the documents to which we are entitled is the sole reason that the Agency is now in the middle of this issue. Any further burden placed on EPA stems from these acts and is in no way the fault of the Ashland Parties.

I have copied Krista on this email so that there is no misunderstanding as to what has transpired with respect to this matter.

Thank you.

Camille

Sent from my iPhone



On Feb 22, 2017, at 8:09 PM, Sylvia Simson  
<[sylviasimson@quinnemanuel.com](mailto:sylviasimson@quinnemanuel.com)> wrote:

Camille, as we have already told you that we are willing to come to an agreement, it is unclear to us why you continue to suggest that there is any need to unduly burden the EPA. We'll get you a draft agreement soon. Thanks.

**Sylvia Simson**  
Quinn Emanuel Urquhart & Sullivan, LLP

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**From:** Otero, Camille V. [<mailto:COtero@gibbonslaw.com>]  
**Sent:** Wednesday, February 22, 2017 6:24 PM  
**To:** Sylvia Simson <[sylviasimson@quinnemanuel.com](mailto:sylviasimson@quinnemanuel.com)>  
**Cc:** Hatfield, William S. <[WHatfield@gibbonslaw.com](mailto:WHatfield@gibbonslaw.com)>;  
Andrew J. Rossman <[andrewrossman@quinnemanuel.com](mailto:andrewrossman@quinnemanuel.com)>;  
Jonathan Oblak <[jonoblak@quinnemanuel.com](mailto:jonoblak@quinnemanuel.com)>  
**Subject:** Re: Your clients' production of its 104(e) documents to EPA

Sylvia: thank you for the below response. We have been waiting for such a proposed agreement since we last spoke. Please provide us with a proposed agreement by cob tomorrow so we may review it with our client and provide comments if necessary. If we are unable to reach a resolution of this matter by cob on Friday, we will contact EPA and request that the Agency respond to our FOIA request and produce the documents we requested.

Thank you,

Camille

Sent from my iPhone



On Feb 22, 2017, at 5:07 PM, Sylvia Simson  
<[sylviasimson@quinnemanuel.com](mailto:sylviasimson@quinnemanuel.com)> wrote:

Camille, we already told you that we are willing to come to an agreement with you on this topic. As we previously discussed, our client is amenable to the production of such documents in the Delaware litigation, pursuant to the protective order issued by the Court in that case, provided that (1) the Ashland Parties similarly produce documents provided to the EPA in connection with any 104(e) request and (2) retract their demand for such materials from the EPA such that the EPA can close your pending FOIA request. We are also willing to come to an agreement regarding all parties' use of and reference to their respective productions in conversations with the EPA regarding the LCP Site, provided that none of these confidential documents are disclosed to or reproduced to any other third party without express consent given the confidentiality provisions contained therein. If we are in agreement as to the terms, we will draft a short agreement to this effect for our clients' execution and can then advise Krista she can close out her case. Our document production will follow in short order and we expect that the Ashland Parties' productions will as well. Thank you.

**Sylvia Simson**

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**From:** Otero, Camille V.  
[<mailto:COtero@gibbonslaw.com>]  
**Sent:** Tuesday, February 21, 2017 12:38 PM  
**To:** Sylvia Simson  
<[sylviasimson@quinnemanuel.com](mailto:sylviasimson@quinnemanuel.com)>  
**Cc:** Hatfield, William S.  
<[WHatfield@gibbonslaw.com](mailto:WHatfield@gibbonslaw.com)>  
**Subject:** Your clients' production of its 104(e)  
documents to EPA

Sylvia:

When can we expect production of these  
documents?

If we do not have agreement on production by  
Friday, February 24, 2017, we will call EPA and  
request the immediate production of these  
documents from the Agency.

Thank you.

Camille

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